IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 4TH SEPTEMBER 2007 / 13TH BHADRA 1929

WP(C).No. 22708 of 2007(C)

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PETITIONER:

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D.DHARMARAJAN, S/O LATE D.LAKSHMANAN,
DHARMADATH HOUSE, RARICHAN ROAD,
P.O.ERANHIPALAM, KOZHIKODE-6.

BY ADV. SRI.K.A.SALIL NARAYANAN

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY
SECRETARY TO GOVERNMENT,
LOCAL SELF GOVERNMENT DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

2. THE CORPORATION OF CALICUT,
CORPORATION BUILDINGS,
CALICUT, REPRESENTED BY ITS SECRETARY.

R1 BY ADV. SRI.K.J. MOHAMMED ANZAR, GOVT. PLEADER.
R2 BY ADV. SRI.P.V.KUNHIKRISHNAN,SC,KOZHIKODE CORPN.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 04/09/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**PIUS C. KURIAKOSE, J.**

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W.P.(C) No. 22708 OF 2007

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Dated this the 4th day of September, 2007

**JUDGMENT**

The grievance of the petitioner is that an application for building permit for construction of a residential building on his plot is rejected on the ground that there is a road proposed to be constructed in front of his property. Learned counsel for the petitioner submits that the above proposal had been abandoned and an alternative diverted road which is shown as diverted existing road in Ext.P2 plan has already come into existence. The petitioner points out that the Corporation has already granted permission to the Sales Tax Department to put up a six storied building on their property. Drawing my attention to Ext.P2 Mr.Salil Narayanan, learned counsel for the petitioner submitted that petitioner's plot is in fact situated far away from the Sales Tax property in relation to the diverted existing road. Sri.P.V. Kunhikrishnan, learned Standing Counsel for the Corporation submitted that there is some genuineness in the grievance voiced by the petitioner but according to the learned counsel, since the proposed construction falls within the development of 12 mtr. wide C1-C1 road (and also within its 3 mtr. building line) envisaged in the DTP scheme for Ward-5, Sector 8 of Kozhikode Corporation and also violates the zoning regulation of the scheme

permission was declined. He further submitted that this aspect of the matter was brought to the notice of the petitioner on 05.06.07. It was thereafter that the petitioner submitted Ext.P1 reply informing the Corporation about the emergence of the new road, diverted existing road, and about the permission granted to the Sales Tax Department and also that the Kozhikode Development Authority has resolved to drop the road envisaged in the DTP scheme and the Regional Town Planner has already applied to the Government accordingly. The Standing Counsel submits that since the Government is yet to pass orders on the application of the Regional Town Planner, the Corporation is finding it difficult to pass fresh orders allowing the petitioner's building permit application. I have heard the learned Government Pleader also who is appearing for the 1st respondent.

Having considered the rival submissions addressed at the Bar, I am of the view that the petitioner has a grievance which deserves to be redressed at the hands of this Court. Accordingly, this Writ Petition will stand disposed of issuing the following directions:

The 1st respondent is directed to consider the request submitted by the RTP, Kozhikode and pass early orders dropping the road envisaged in the DTP scheme(the road which is made mention of in Ext.P3 rejection order of the Corporation) and thereby ensure that the

Corporation is able to pass fresh orders on the application for building permit submitted by the petitioner. The Government is directed to pass orders and communicate the same to the Corporation at the earliest and at any rate within two months of receiving copy of this judgment. If favourable orders are not received from the Government within the aforesaid period of two months, the Corporation is directed to grant provisional building permit by re-considering the application submitted by the petitioner subject to final orders to be passed by the Government after receiving an understanding from the petitioner to the effect that if Government decision is unfavourable, he will demolish the building. In order to enable the Government and the Corporation to comply with the above directions, Ext.P3 is quashed.

**PIUS C. KURIAKOSE, JUDGE**

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